Ever since indigenous peoples joined hands with the United Nations Working Group for Indigenous Populations (UN WGIP) in working on a Draft Declaration on Indigenous Peoples Rights, the right to self-determination has been on top of their agenda. It has entered the draft declaration as article 3 which states: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development”. Article 3 has always been the most contentious one, and remains so in the ongoing discussion within the Open-ended Working Group, with most governments showing stiff resistance to accepting, and indigenous representatives as adamantly defending it. Since the right to self-determination is enshrined in the Charter of the United Nations and other international legal instruments like the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the controversy, it is all-too well known, ultimately revolves around the issue of the recognition of indigenous peoples as “peoples”.

What makes article 3 so difficult to accept for most States is its statement that self-determination implies the right to “freely determine their political status”. The reason for their opposition is their adherence to the principle of State sovereignty and territorial integrity, and consequently, their fear that the recognition of the right to self-determination of indigenous peoples could be a threat to the unity of States, to stability and peace. Indigenous peoples argue that since the right of self-determination under international law is a right of all peoples, it would be discriminatory if it was applicable to all other, but not indigenous peoples. As Henriksen has pointed out, while indigenous peoples base their demand of the right to self-determination on the principle of equality, this does not necessarily mean that they intend to establish their own State. “One should bear in mind that the western nation state concept is not the most natural way of implementing or exercising the right of self-determination for the vast majority of indigenous peoples.” In line with the position of indigenous peoples elsewhere in the world, indigenous representatives from all over Asia have also reiterated this during a
regional conference in 1999 when they wrote in their concluding declaration that they “acknowledge that although autonomy and self-government may be a way through which many indigenous peoples wish to exercise their right of self-determination, that these are not the only ways by which indigenous peoples may exercise this right”.5

Although, as Henriksen writes, the United Nations itself has so far been reluctant to recognize any further extension of the right to self-determination beyond the traditional context of de-colonization, he believes that there are indications that the understanding of the scope of the right of self-determination may be evolving further. And he points out that the “international process is influenced by national political processes, which often tend to be more pragmatic and flexible”, that “national experiences of indigenous self-determination…directly influence the international debate and thereby move the discourse forward”.6

Meanwhile, indigenous communities all over the world are facing the harsh reality of their struggle to maintain their identity and control over their lands and resources in the face of increasing assimilation pressures and ongoing encroachment on their territories. With the exception of a few cases where indigenous peoples have been granted a certain degree of autonomy or self-governance by the State, most indigenous peoples are still struggling to carve out as much space as possible within the existing power structure of nation states in order to regain more control over their lives and their destiny.

In Southeast Asia, the region where the two country studies presented in this volume have been conducted, most independence movements of indigenous peoples – like the indigenous peoples of the Chittagong Hill Tracts of Bangladesh, of numerous indigenous ethnic groups in Burma or in Northeast India7 – are ready to negotiate or have negotiated a solution within the framework of the existing nation state. Certain forms of autonomy agreements have emerged or are likely to emerge from these negotiations. In all other Southeast Asian countries regional autonomy does not exist and, with the exception maybe of the Cordillera Region on the Philippines, under the given socio-political conditions will not be a realistic option for a long time to come.

Far from the dismal picture of secession and civil war painted by apprehensive governments, asserting self-determination among most indigenous peoples in Southeast Asia takes place in a far more subtle, unobtrusive way, and on the level
that has ever since been the social sphere most relevant to their lives: the community.

Forced to be part of nations states on which they have little influence, and thereby into political systems alien to them, indigenous communities are faced with the dilemma to either reject the system – and continue their demand for the recognition of their right to some sort of self-governance –, or to accept, try to engage in and gain more influence over it. With their traditional political organization severely weakened or even dissolved, for many indigenous peoples in Southeast Asia, the first option would imply enormous efforts to revitalize traditional governance. Furthermore, in light of the current policies and legislative frameworks of most Southeast Asian nations, the option of struggling for self-governance has little prospect of success. Engagement in mainstream political processes and seeking participation in government – and maybe exploring possibilities for a pragmatic interfacing of traditional forms of governance with the state system – might for many be the more realistic alternative. With the small numerical strength of indigenous peoples in most Southeast Asian nations this in most cases means above all engagement on the local level, i.e. in local governments. In fact, except for communities in very remote areas they have hardly been able to avoid being drawn into the state political-administrative system, even if they had preferred so. And, after all, linking up with the state power has always been attractive to the more ambitious among them, as it was a way to gain power, status and wealth.

Since colonial times anthropologists have studied the interaction of traditional indigenous political institutions and leaders with the state politico-administrative system. However, fairly little research has been conducted in Southeast Asia on indigenous peoples’ engagement in local government within the conceptual framework of indigenous-rights advocacy, analyzing existing experiences in light of their potentials and limitations for furthering indigenous peoples’ rights, and among them self-determination. As democracy slowly advances in most Southeast Asian nations, and since this often – as for example in the Philippines or Thailand in the early and mid-1990s or Indonesia just before the new millennia – includes decentralization and the devolution of power to local governments, such research is highly relevant for the contemporary indigenous rights movement in Asia.

This volume presents the result of research on indigenous peoples’ experiences with participation in local government in two Southeast Asian countries: the Philippines and Malaysia. The research is part of an IWGIA project that aims to explore the potentials
of and to strengthen indigenous peoples’ participation in local government in two countries in South America (Peru and Venezuela) and the two mentioned above. In both countries, the research focused on two areas in which data was gathered. In the Philippines the case studies were conducted in the Cordillera region in the North, and in Mindanao in the South. In Malaysia, case studies were conducted in the eastern state of Sabah and among Orang Asli communities on Peninsular Malaysia. The research results were presented and discussed during national-level workshops in both countries, and in October 2003, a workshop on “Indigenous Peoples and Local Governance” was organized in Sagada, in the Cordillera in the Northern Philippines, during which the experiences documented by the research in the two countries were exchanged.

While there is an underlying common experience of ongoing dispossession, marginalization and weakening of traditional institutions due to state negligence, misguided policies and powerful vested interests, the case studies reveal enormous differences with respect to state policies and the possibilities for indigenous communities to constructively engage in local government. There is the case of almost complete disenfranchisement of indigenous communities, like that of the Orang Asli in Peninsular Malaysia, where any interaction with the local government structure has to be done through or at least sanctioned by the Department of Orang Asli Affairs (Jabatan Hal Ehwal Orang Asli or JHEOA), a specialized agency created to control and govern the Orang Asli. In contrast, the Local Government Code in the Philippines provides for the creation of Local Special Bodies that are supposed to ensure the representation of civil society organizations and concerned and private sectors in the community, and to make policy recommendations to the local chief executive and local legislative body. Even though this provides better opportunities for civil society involvement, the observed level of participation in local government is varying and in most cases still fairly low.

Key factors determining the level of indigenous peoples’ engagement in local government are on the one hand found within the state system, i.e. they are related to the degree of democratization of political processes in general and on the local level in particular, the degree of decentralization of governance, and, where they exist, the degree of actual implementation of decentralization laws, as well as the level of harmonization of laws, policies and state institutions. Other crucial factors lie within the indigenous communities themselves, i.e. they relate to their capacity to make use of the existing opportunities. This again is largely
determined by the level of awareness and mobilization by the communities (as, for example, reflected in the presence and active participation of local civil society organizations), the existence and strength of customary indigenous institutions and the extent to which they are able to interface with the state structure. As the study in the Philippines concludes, traditional values and institutions promote self-governance, but can also be beneficial to formal structures of local governance (page 163). On the other hand, the same report points out that decentralization and opportunities created for indigenous peoples’ participation “can in fact be instruments for the obliteration of indigenous institutions as these are increasingly subsumed under state law, in the name of decentralization for good governance.” (page 163)

The United Nations Development Program (UNDP) characterizes good governance as being, “among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.”

While pointing out that the characteristics of good governance defined in societal terms remain elusive, the UNDP document cited above lists nine core characteristics of good governance, which are “interrelated … mutually reinforcing and cannot stand alone”.

- Participation
- Rule of law
- Transparency
- Responsiveness
- Consensus orientation
- Equity
- Effectiveness and efficiency
- Accountability
- Strategic vision

*(more details in the report on Peninsular Malaysia on page 18)*

The document further adds that these characteristics “represent the ideal - and no society has them all. Even so, UNDP believes that societies should aim, through
broad-based consensus-building, to define which of the core features are most important to them, what the best balance is between the state and the market, how each socio-cultural and economic setting can move from here to there.”

However, as pointed out above, seemingly well-intended policies that aim at promoting good governance can have deleterious impacts on indigenous customary institutions and thus weaken effective participation in local government in tune with their culture and social organization. Thus, while the working group on “Advocacy on good governance and indigenous peoples’ self-determination” formed during the workshop on “Indigenous Peoples and Local Governance” mentioned above acknowledged UNDP’s nine core characteristics, it found them insufficient to address the particular situation of indigenous communities. The working group therefore suggested the following additions:

- The recognition of collective rights and decision making;
- The need for cultural sensitivity;
- Respect for traditional self-governance systems and institutions;
- Respect for customary law;
- The need to further women leadership and participation.

The research results presented in this volume reveal the various limitations for meaningful and effective participation of indigenous communities in local government. Engaging in local government still remains an unsatisfactory option for indigenous peoples to promote their rights in general, and local-level self-determination in particular. The participants at the workshop on Indigenous Peoples and Local Governance therefore came up with fifteen concluding recommendations that point at the various directions their own and the respective governments’ work has to take in order to make engagement in local government a viable option and good governance a meaningful concept for indigenous peoples.

RECOMMENDATIONS FOR FURTHERING AND SUPPORTING INDIGENOUS PEOPLES’ PARTICIPATION IN LOCAL GOVERNMENT

(by the participants of the workshop on Indigenous Peoples and Local Governance, Sagada, Philippines, October 29, 2003)

1) To continue to assert the recognition of indigenous peoples rights over territories, resources and customary law (including the selection of leaders).
2) Non-interference of the state in dispute settlement between and within indigenous communities.

3) Non-interference of the state and democratization in the selection of indigenous leaders.

4) Capacity building for leadership, resource management and participation in local governance.

5) Sensitizing and capacity-building of Local Governments (including bureaucrats and government employees) in promoting the rights and welfare of indigenous peoples.

6) To continue network building and exchange of experiences, lessons learned and information with regard to local governance.

7) To utilize available laws, policies or programs that are useful to indigenous peoples in furthering their rights and welfare.

8) To call for the adoption of, and demand, the implementation of local, national and international instruments that promote indigenous peoples’ rights.

9) Greater recognition and participation of indigenous women in community affairs, leadership, resource management and local governance.

10) Greater recognition and participation of indigenous youth in community affairs, leadership, resource management and local governance.

11) To continue research and documentation on resource management and customary law of indigenous peoples. For the Philippines, the evaluation and assessment of the implementation of the Indigenous Peoples Rights Act (IPRA).

12) Greater political involvement in existing political processes to advance the recognition of indigenous rights and issues.
13) To promote the indigenous concept of good governance and our own perspective and decision-making on development.

14) To build mechanisms for the greater participation and engagement of indigenous peoples in relation to the formulation of policies, guidelines and programs concerning indigenous peoples at all levels.

15) Active support to elected indigenous office-holders by elders, peoples’ organization, and support NGOs.

Notes:


3 ibid.

4 ibid.


6 Henriksen op.cit. p. 7

7 Here, Southeast Asia refers to a socio-culturally and not geo-politically defined region, thus including the Chittagong Hill Tracts of Bangladesh and the seven states of Northeast India.

8 The project itself is one in a series of initiatives of IWGIA that aimed at furthering exchange of experiences, discussions and a better understanding of the multifaceted processes of political participation and asserting the right to self-determination. These include the Conference on Indigenous Peoples, Self-determination and the Nation State in Asia, workshops on Indigenous Peoples and Political Parties, and Indigenous Peoples and Self-determination in Northeast India and the Arctic. The project Indigenous Peoples and Local Government is part of a program funded by the European Commission.


10 Ibid.

11 Ibid.